

PREPARED BY THE COURT

GOVERNMENT
ACCOUNTABILITY &
OVERSIGHT,

Plaintiff,

v.

DIVISION OF LAW,
DEPARTMENT OF LAW &
PUBLIC SAFETY, and the
OFFICE OF THE ATTORNEY
GENERAL,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION – MERCER COUNTY
DOCKET NO. L-1396-23

CIVIL ACTION

**ORDER COMPELLING PRODUCTION
OF VAUGHN INDEX AND DIRECTING
IN CAMERA REVIEW OF THE
RECORDS AT ISSUE**

THIS MATTER having come before the Court, the Hon. Robert Lougy, A.J.S.C., presiding, on the verified complaint and order to show cause filed by Plaintiff Government Accountability & Oversight, represented by Ronald A. Berutti, Esq., and Matthew Hardin, Esq., admitted *pro hac vice*, asserting claim under the Open Public Records Act; and Defendants Division of Law, Department of Public Safety, and the Office of the Attorney General, represented by Deputy Attorney General Rachel Manning; and Defendants having asserted numerous redactions to

admittedly responsive records; and the Court having considered the parties' pleadings and written oral arguments; and for good cause shown;

IT IS on this 16th day of October 2023 **ORDERED** that:

1. Defendants shall prepare and file a privilege log comporting with the requirements of Rule 4:10-2(e)(1) with respect to each redaction of the records no later than fourteen days from the date of this Order. Same shall be filed on eCourts.
2. Simultaneously, Defendants shall hand-deliver an unredacted copy of the records at issue to the Court's chambers at the Mercer County Criminal Courthouse, 400 South Warren Street, 4th Floor, Trenton, New Jersey. The records shall be in an envelope that indicates that the records are **SEALED** and **CONFIDENTIAL** and not uploaded to eCourts.
3. Defendants shall file correspondence via eCourts confirming to the Court and Plaintiff that the records have been delivered to the Court.

/s/ Robert Lougy
ROBERT LOUGY, A.J.S.C.

Defendants assert various privileges. In meeting its burden of justifying denial, the agency must offer specific reasons. The "mere assertion of privilege" is not enough. Burke v. Brandes, 429 N.J. Super. 169, 178 (App. Div. 2012). When

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stating the reasons for the denial of a request, the government agency need not reveal the privileged material, but must follow the standard in Rule 4:10-2(e), “which permits the party claiming privilege to ‘describe the nature of the documents . . . not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.’” Paff v. N.J. Dep’t of Labor, Bd. of Review, 379 N.J. Super. 346, 354 (App. Div. 2005) (quoting R. 4:10-2(e)).

While OPRA does not mandate that the government agency file a privilege log when asserting a claim of privilege, the Appellate Division has advised that “the court is obliged when a claim of confidentiality or privilege is made by the public custodian of the record, to inspect the challenged document *in-camera* to determine the viability of the claim.” MAG Entm’t, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 545 (App. Div. 2005) (citing Hartz Mountain Indus., Inc. v. N.J. Sports & Exposition Auth., 369 N.J. Super. 175, 183 (App. Div. 2004)). In-camera inspection allows both parties the opportunity to address principles related to the claim of confidentiality and privilege; it also allows the government custodian to argue specifically “why the document should be deemed privileged or confidential or otherwise exempt from the access obligation.” Ibid. (quoting Hartz Mountain Indus., 369 N.J. Super. at 183).

While Plaintiff does not have a right to automatic *in camera* inspection by the Court, see Loigman v. Kimmelman, 102 N.J. 98, 109 (1986) (observing that “a right to automatic *in camera* review is not warranted” in claims under the common law right to know), the Appellate Division has advised that “under OPRA ... the court is obliged, when a claim of confidentiality or privilege is made by the public custodian of the record, to inspect the challenged document *in camera* to determine the viability of the claim,” Hartz Mountain Indus., 369 N.J. Super. at 183.

This Court has determined that *in camera* review is necessary to determine the validity of the claims of privilege. This Order establishes the timing and procedure for same.